

Harpswell Board of Appeals  
Minutes of February 25, 2009

Approved

Page 1 of 5

**Attendance:** Ned Simmons, Chair, Jim Knight, Ellen Lebauer, John Perry and George Every. In addition, Code Enforcement Officer William Wells and Recording Secretary Melissa Moretti were in attendance.

The meeting had been duly advertised in the Brunswick *Times Record*. Mr. Simmons, Chair, called the meeting to order at 6:37 PM at the Harpswell Town Office, 263 Mountain Road, Harpswell.

The Chair then read the Agenda and introduced the Board members. He then explained the meeting procedures to the audience.

It was stated that the site visit last month at the LaPlaca property was attended by Ms. Lebauer, Mr. Knight and Mr. Perry. Mr. Every stated that he drove by the property. [It should be noted that last month's Board of Appeals meeting had been cancelled because of inclement weather, which was also a factor for the scheduled site visit of February 23, 2009.]

**1. Matter of Damian R. LaPlaca, Request for Undue Hardship Variance under §14.1.3.2 of the Basic Land Use Ordinance, Tax Map 27 Lot 91, 17 Goodwin Lane, Orr's Island.**

**Participating in Hearing** – The Board members present and the Code Enforcement Officer, Mr. Wells.

The Chair read through the materials provided to the Board which included a justification of the Variance, a Site Plan of the property, a Land Use Application dated June 23, 2008, a Notice of Violation from the Code Enforcement Office to Mr. LaPlaca and several pages of photographs and sketches of the property. The Chair noted that there was no deed or interest in the property presented and, if approval of the variance was granted, it would be contingent upon supplying that information at a later date.

Damian LaPlaca, owner of the property located at 17 Goodwin Lane, addressed the Board. He stated that he could supply proof of ownership to supplement the record, if necessary. He thanked the Board for visiting the site. He explained that he was requesting a hardship exception based on the Basic Land Use Ordinance. He said that he understood Mr. Wells' primary concern to be the stairs and the setback. He stated that there were orange flags that had been placed on the property by the last (third) survey that he had done. The Chair clarified that the squares on the plan represented those flags. Mr. LaPlaca said they were placed by Mr. Harty, who had done the third, and most recent survey. He said that the first survey had been done before construction began and showed where the 75 ft. setback restriction began and that the stairs would have fit within that area. He also had a second survey done that showed the stairs to be in violation. He was before the Board to seek a variance to allow the stairs to continue to exist; they have been there for two years. He said that it was an oceanfront property, and the abutter to the right, Pat Galbreath, had no problem with it; the abutter to the left could not see it because of the trees between the two properties.

The Chair was of the opinion that the greatest issue was why the land "would not yield a reasonable return" unless the variance was granted, item #5 of the Variance Request Application. Mr. LaPlaca thought that, in order to correct the problem, the stairs would have to "flair out" from the deck, which would be unattractive and therefore affect the yield for a reasonable return. The Chair explained that "a reasonable return" was actually a minimal use, and the Board had to adhere to that. Mr. LaPlaca thought that the Board would consider "a reasonable return" on a case by case basis.

Mr. Knight produced a copy of the "Shoreland Zoning Newsletter", published by the State from the Fall of 2008, and stated that it addressed the issue currently before the Board. He read from the newsletter regarding variance requests, and explained that the laws that govern the Board of Appeals are strict and that he agreed with the Chair. Mr. LaPlaca was provided a copy of the newsletter. [A copy of the newsletter can be found in the Code Enforcement Office files.]

The Chair asked the Board if there were questions. Ms. Lebauer clarified that the Applicant had not received a permit prior to construction of the stairs. The Board suggested alternative staircase styles that would make them fit within the necessary parameters of the Ordinance.

Mr. LaPlaca said that the Ordinance stated "a reasonable return", and the statute Mr. Knight mentioned in the Newsletter stated "all reasonable return". The Chair responded that the Town is required to be at least as strict as the State mandated Ordinances.

The Chair asked if there were any further comments from the Board; there were none. He then asked if the Code Enforcement Officer wanted to address the issue.

Mr. Wells informed the Board that there was more to the issue than just the staircase. He said there had been three surveys done, the most recent by Pat Harty of Harty & Harty. Mr. Harty had said there had been a staircase off to the south several years ago when he had done a mortgage survey. Mr. Wells explained to the Board the details of the site plan, including the "grandfathered" setback.

Harpswell Board of Appeals  
Minutes of February 25, 2009

Approved

Page 2 of 5

Mr. Knight asked if that was part of the appeal; the Chair said the appeal could be amended to include it. Mr. Wells said that he didn't think it had been addressed, but had discussed it with Mr. Harty. There was discussion among the Board regarding the idea that the appeal was really for two issues. Mr. Wells clarified that, as built, the deck did not conform to the Ordinance: a) the 30% expansion of the non-compliant portion of the structure, and b) the 75 ft. setback from the water. Mr. Wells referred the Board to his letter dated October 27, 2008 "Notice of Violation" which stated that "approximately 133 sq. ft." of the structure would have to be removed for the structure to comply with Harpswell's Ordinances. Mr. LaPlaca said the letter did not address the location of the 133 sq. ft. He also showed the Board photographs of the area of the structure in question.

The Chair asked Mr. LaPlaca what he would like for a variance. Mr. LaPlaca stated that he wanted to keep the side where the alcove is. The Chair said they would need specific language if the Board decided to grant the variance.

The Board discussed having Mr. LaPlaca return at a later date, which would give him time to resolve the issue of the stairs with the Code Enforcement Officer.

It was clarified that the side stairs had been removed in 2006 when the new deck was built.

It was suggested by the Board that the Applicant, the Code Enforcement Officer and the surveyor, Mr. Harty, meet together to resolve the sideline issue.

Chip Black, the builder of the deck, addressed the Board. He explained that, when he had calculated the rise and the run, it was right on the line of the 75ft. setback – where he thought the line was, not where it was presently flagged.

The Chair stated that it was clear what would be necessary in order to have the stairs conforming; what was not clear, was how to make the southwest corner of the deck conforming.

Mr. LaPlaca requested a continuance from the Board. The motion was made and seconded to continue the matter until the next regularly scheduled Board of Appeals meeting, the fourth Wednesday in March. The Board voted to continue the matter; they also kept the photographs that Mr. LaPlaca had provided.

**2. Matter of Orr's Island Library Association, Inc., Request for Practical Difficulty Variance under §14.1.3.5 of the Basic Land Use Ordinance, Tax Map 30 Lot 76, 1699 Harpswell Islands Road, Orr's Island.**

**Participating in Hearing** – The Board members present and the Code Enforcement Officer, Mr. Wells.

The Chair read through the materials provided to the Board. Roberta Floccher, President of the Board of Directors of the Orr's Island Library Association ("the Library"), a non-profit corporation, addressed the Board. She said the Library had been providing services to the community of Harpswell for over 100 years. She described the variances requested, and referred the Board to Item 3(b) of the Application.

Ms. Floccher addressed the matter of the front stairs, and referred the Board to the large version of the site plan that she had provided. She said that the stairs had to be addressed in order to make the building ADA (the "Americans with Disabilities Act") compliant. She also stated the reason for the overall expansion was to improve the Library services, i.e. to allow for additional space, etc.

Tom Brudzinski of Orr's Island, addressed the Board. He said he had been working on a plan with two other people for over a year that would allow the Library to update its functionality and ensure its continued existence. He said there was an issue of "confused" property lines with the abutter to the South, the Graybills (he referred the Board to Addendum A of the Application materials).

Mr. Brudzinski mentioned that he had a background in architecture for 43 years which included design and development. He said his part in the Library project was the design of the building. Also involved were Jack Sylvester who handled negotiations, and John Hall, who was a landscape architect. He explained that the reason for the request was to try to resolve the four variance issues of the non-conforming property (items that had been grandfathered).

Mr. Brudzinski addressed the first variance sought, which was the 100 ft. of road frontage on Route 24. [Detailed descriptions of the variances sought can be found on Addendum A of the Variance Request Application.] He showed the Board a site plan and explained that the land transfer would involve narrowing the Library ownership on one side and extending it in the back, and the Graybills would remove the structure that is across the property line. He explained each variance request in detail. The Board confirmed their understanding of a "land swap".

Harpswell Board of Appeals  
Minutes of February 25, 2009

Approved

Page 3 of 5

Ms. Floccher said that the Graybills had agreed in negotiations with Mr. Sylvester that the exchange would happen. The Library would not proceed with the project until the requested variances were granted.

John Robbins from Bailey Island, addressed the Board as a Trustee of the Library. He explained that there was a well at the back of the property that the Graybills had let the Library use. The exchange would put the well under the auspices of the Library.

The Chair asked how quickly the exchange could take place because there was a time restriction with regard to the recording of the variances. Mr. Robbins said that the deeds had been written, they just needed the variances and then the deeds could be recorded. It was clarified that the variances must be recorded with the deed.

The Board discussed whether they could grant a variance if the applicant did not own the property. It was thought that the variance could be recorded with the deed contingent upon the transfer taking place.

Mr. Brudzinski described the third variance requested (the sideline setback). He showed the Board the proposed drawing, and explained the change in the design of the exterior front stairs [ref. Item c. of Addendum A]. Mr. Wells said he understood the new stairs were closer to the road than the existing stairs, and said that was not depicted on the plan. Mr. Brudzinski explained that there would be a landing and a vestibule also. He said that the variance requested was computed to be 13.5 ft. from the setback.

Mr. Wells stated that the Library brought the matter to the Code Enforcement Office for an "advisory opinion". The items he found deficient with regard to the Ordinance were the setback from the road, a sideline setback issue and also a 20% maximum land use issue. He said that it was possible that the land swap issue with the Graybills was not "equal"; he said it should be identical in square footage. He also stated the road frontage was non-conforming; if the line was reconfigured as proposed, the road frontage would be decreased.

The Chair stated that the Board could not deal with the land swap issue. Mr. Wells said he had suggested to the Library by e-mail that they get their surveyor involved. By doing so, he thought that an equal land swap could be accomplished. It was clarified that both lots were non-conforming at present. Mr. Wells stated that neither lot could become more non-conforming. It was stated that the Code Enforcement Office would deal with that, and Mr. Wells reminded the Board that the Library would also have to go before the Planning Board.

The Board decided to write the land swap into the contingency. It was clarified that, in order to work, all issues would have to happen concurrently.

Mr. Brudzinski addressed the coverage issue, and said that the proposed plan would take the coverage to 25%; 20% was allowed, and almost all of that could be credited to ADA and access related solutions, i.e. the slightly larger vestibule, the additional landings on the stairs, and the long ramp. There was discussion regarding the ADA requirements; Mr. Brudzinski said that the ADA was a civil rights law and not a building code (unless it had been adopted as such). It was noted by the Board that the ADA requirements were not addressed in the Ordinance, and that issue should be addressed/rectified in the future. It was clarified that the disability variance was not applicable in this case because the building was not a residence.

Mr. Robbins said that if the land swap was to happen, they needed time to change the deeds. The Board also said that the drawing would have to be changed. The Board referred to the Ordinance regarding the amount of time allowable in order to file a variance change; it was 90 days.

It was clarified that the Warrant of the Town Meeting to be held March 14, 2009 mentioned the Library, but the issue was for project funding.

Mr. Brudzinski stated that what the land swap would do would be to clarify the confusing land ownership situation, water rights, etc.

The Chair said that he thought that the "potentially problematic" issues were a) how the practical difficulty was not the result of action taken by the Applicant, and b) an explanation of why no other feasible alternative was available.

Mr. Knight said that, as the Library tried to achieve an even land swap, the property lines might change. Mr. Brudzinski said that the land swap would resolve two problems that weren't created by the Library: 1) they used a well that they apparently didn't own legally, and 2) the distance from the existing Library building to the shed, which would be resolved by that shed "going away". The additional land that is partly occupied by that building gave the Library the ownership of the well that they used.

Harpswell Board of Appeals  
Minutes of February 25, 2009

Approved

Page 4 of 5

Mr. Wells reminded the Board that the property line was in dispute and their action would be a correction of the deed; it wasn't anyone's fault. It was clarified that the back line was in dispute; it would be the back line that would be corrected, and would not affect the other variances. It was also clarified that the Graybills would move the shed before the land swap took place.

The Chair asked for explanation of why no other feasible alternatives were available to the Applicant. It was decided that the negotiations between the Applicant and the Graybills had produced a result that was agreeable to both parties. The Board discussed whether to consider each variance individually. Ms. Floccher addressed the issue, and referred the Board to Addendum B, the proposed lot coverage calculations. The Chair clarified the authority of the Board in granting a variance.

Mr. Knight asked for the Board to vote on whether to consider the items individually; the Chair said he could make a motion. Mr. Knight moved that the Board consider the "collection" of requests for variances as an individual issue. The motion was seconded. Mr. Perry suggested going through each request (Item 3b (1-4)) for clarification purposes. The Board voted 4 to 1 to consider the requested variances as an individual issue (Ms. Lebauer voted nay.)

The Chair read each variance request:

- 3.(b) 1. Road Frontage: "Required 150 ft., Available 90 ft. – Variance Sought 60 ft."  
Finished Frontage: 90 ft.
2. Front Setback: "Required 40 ft., Available 26.5 ft. – Variance Sought 13.5 ft."  
Variance would reduce the setback by 13.5 ft.
3. Sideline setback: "Required 20 ft., Available 15.5 ft. – Variance Sought 4.5 ft."  
Variance would be reduced by 4.5 ft.
4. Lot Coverage: "Maximum allowed, 20%, Proposed 25% - Variance Sought would be an increase of 5.0%"  
The impermeable area coverage will be allowed to be 25%, an increase of 5.0%

Conditions of Approval:

1. Neither the Graybill's lot nor the Library lot can be non-conforming with respect to area;
2. Variance will be contingent upon the land swap and the recording of the associated deeds.

The Chair addressed Item 5 of the Variance Request Application that applied to a request for practical difficulty variance. In order for the variance to be granted under §14.1.3.5, there were eight criteria that must be met:

1. The Application referred to Addendum A. The Chair moved that strict application of the ordinance would preclude a much needed renovation and expansion of the Library facilities. The motion was seconded; there was no further discussion. The Board voted unanimous approval.
2. The Application stated that the economic well being of the Library hinged upon its ability to provide new and expanded services to meet the changing needs and preferences of the community it served in a physically safe and efficient environment. The Chair moved that the Library's Application summation satisfied the requirements of no. 2; the motion was seconded. There was no further discussion. The Board voted unanimous approval.
3. The Application stated that the Library was located in the village section of Orr's Island before the advent of land use ordinances and life safety codes. Its central location was within walking distance of most of the community's resident and seasonal population. The variances sought were generally unrelated to neighborhood conditions which have changed comparatively little over the years. The Chair moved that no. 3 had been satisfied by the stated justification; the motion was seconded. There was no further discussion, and the Board voted unanimous approval.
4. The Application stated that the proposed variances would not change any existing land use or the essential character of the neighborhood. No abutting owner would be detrimentally affected. The Chair moved that the criteria for no. 4 were met by the Application; the motion was seconded. There was no further discussion; the Board voted unanimous approval.
5. The Application stated the difficulty arose primarily from the changing needs of a facility built more than a century ago. The size and topography of the lot, underlying ledge conditions, small building spaces, difficult access, and limited parking were among the obstacles the Library was confronted with today. The proposed improvements would remedy certain of these conditions and extend the life and service of this community treasure for many years to come. The Chair also mentioned that the boundary issues should be included. The Chair moved that the criteria for no. 5 were met by the Applicant; the motion was seconded. There was no further discussion. The Board voted four to one to approve. (Mr. Every voted nay.)
6. The Application stated that the Library's alternatives were (i) to do nothing, (ii) to reduce the scope of the program, (iii) to close and relocate, or (iv) to litigate the property issue. The Library's Trustees and advisors believed none of the alternatives realistically address the Library needs or were reasonably capable of attainment. The Chair said that it had been discussed by the Board that no other

Harpswell Board of Appeals  
Minutes of February 25, 2009

Approved

Page 5 of 5

alternatives were feasible. He moved that the criteria for no. 6 had been met by the Applicant. There was no further discussion; the Board voted three to two for approval. (Mr. Every and Ms. Lebauer voted nay.)

7. The Application explained that the relatively minor increase in lot coverage would be offset by increased shrub and tree plantings. Added fill and revised grading would improve site drainage and storm water retention. The natural environment would not be unreasonably impacted. The Chair moved that the criteria for no. 7 had been met by the Applicant. The motion was seconded; there was no further discussion. The Board voted unanimously for approval.

8. The Chair stated that it had been demonstrated that the Library property was not in the shoreland zone. He made the motion that the criteria for no. 8 had been met by the Applicant. The motion was seconded; there was no further discussion. The motion carried unanimously.

The Chair also moved that, as part of the approval, two conditions be attached to the variance:

- 1) neither the Graybill lot nor the Library lot shall become more non-conforming as a result of the land swap (i.e. an equal "area for area" swap); and
- 2) that the variance would not become effective, and would be contingent upon, the land swap being accomplished and the recording of the associated deeds of the swap.

The motion was seconded.

Mr. Knight asked for clarification regarding the granting of the variances since the Library would have to continue on for approval from the Planning Board. Mr. Wells said they would have 90 days, and the Chair said if they ran out of time, they could have a special meeting to reaffirm. There was further discussion. Ms. Floccher asked if they could say it was compliant with all other regulatory standards. The Chair explained that the Board's concern was that, if they granted a variance and it was not used, it was there forever. The Chair asked if the Library would accept approval contingent upon Planning Board approval.

The Chair amended the previous motion to state that the variance would be contingent upon approval of the pending project by the Planning Board and Code Enforcement Office. The motion to accept the amendment was seconded; the Board voted unanimous approval.

There was no further discussion regarding the original motion; the Board voted unanimously to approve the project, with the stated conditions.

Mr. Every asked to revisit no. 6, which had been voted on. However, the Chair allowed his opinion to be expressed: that, if the Applicant had been other than the Library, would the Board have done the same thing?

### **3. Other Business**

There was some casual, preliminary discussion regarding the residency requirement issue scheduled to be formally discussed at the next Board of Appeals meeting.

### **Consideration of Minutes: Meeting of December 15, 2008**

The Chair suggested a change of wording at the bottom of page 1 to read: "The Board agreed that the proposed changes would be better for the Town, and the consensus of the Board was that they had no reservations with Mr. Wells continuing the permitting process for Mr. Merrill." It was moved that the Minutes be accepted as amended; the motion was seconded. There was no further discussion. The Minutes were approved with correction by all members present (Mr. Every was recused).

The Chair said he would complete the Notice of Decision for Variance when the Recording Secretary could provide him with the appropriate form. The Board members would sign the completed form when it became available.

**The Chair adjourned the meeting at 9:00 PM.**

**Respectfully Submitted,**

**Melissa Moretti  
Recording Secretary**

Harpswell Board of Appeals  
Minutes of February 25, 2009

Approved

Page 6 of 5